

AMENDED IN SENATE MAY 10, 2016  
AMENDED IN ASSEMBLY JANUARY 4, 2016  
AMENDED IN ASSEMBLY APRIL 21, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 326**

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**Introduced by Assembly Member Frazier**

February 13, 2015

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An act to amend Section 1742.1 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL’S DIGEST

AB 326, as amended, Frazier. Public works: prevailing wage rates: wage and penalty assessments.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines, after investigation, that the contractor or subcontractor, or both, violated the laws regulating public works contracts, including the payment of prevailing wages. Existing law also requires the awarding body, as defined, to withhold from payments due under a contract for public work an amount sufficient to satisfy the civil wage and penalty assessment issued by the Labor Commissioner, and to give notice of the withholding to the affected contractor or subcontractor.

Existing law permits the affected contractor or subcontractor to obtain review of a civil wage and penalty assessment or a notice of withholding, as specified. Existing law provides that, after 60 days following the service of a civil wage and penalty assessment or notice, the affected contractor, subcontractor, and surety on a bond issued to secure the

payment of wages, as provided, become liable for liquidated damages in an amount equal to the amount of unpaid wages, as specified. Existing law provides that there is no liability for liquidated damages if a contractor, subcontractor, or surety deposits the full amount of the assessment or notice, including penalties, with the Department of Industrial Relations to hold in escrow pending administrative or judicial review. Existing law requires the department to release those funds, plus any interest earned, to the persons and entities found to be entitled to the funds at the conclusion of all administrative and judicial review.

This bill would require the department to release the funds deposited in escrow plus interest earned to those persons and entities within 30 days following *either the conclusion of all administrative and judicial review, review or upon written notice being received by the department from the commissioner, his or her designee, or a representative of an authorized labor compliance program of an awarding body of a settlement or other final disposition of the assessment or notice.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1742.1 of the Labor Code is amended to  
2 read:  
3 1742.1. (a) After 60 days following the service of a civil wage  
4 and penalty assessment under Section 1741 or a notice of  
5 withholding under subdivision (a) of Section 1771.6, the affected  
6 contractor, subcontractor, and surety on a bond or bonds issued to  
7 secure the payment of wages covered by the assessment or notice  
8 shall be liable for liquidated damages in an amount equal to the  
9 wages, or portion thereof, that still remain unpaid. If the assessment  
10 or notice subsequently is overturned or modified after  
11 administrative or judicial review, liquidated damages shall be  
12 payable only on the wages found to be due and unpaid.  
13 Additionally, if the contractor or subcontractor demonstrates to  
14 the satisfaction of the director that he or she had substantial grounds  
15 for appealing the assessment or notice with respect to a portion of  
16 the unpaid wages covered by the assessment or notice, the director  
17 may exercise his or her discretion to waive payment of the  
18 liquidated damages with respect to that portion of the unpaid  
19 wages. Any liquidated damages shall be distributed to the employee

1 along with the unpaid wages. Section 203.5 shall not apply to  
2 claims for prevailing wages under this chapter.

3 (b) Notwithstanding subdivision (a), there shall be no liability  
4 for liquidated damages if the full amount of the assessment or  
5 notice, including penalties, has been deposited with the Department  
6 of Industrial Relations, within 60 days following service of the  
7 assessment or notice, for the department to hold in escrow pending  
8 administrative and judicial review. The department shall release  
9 the funds in escrow, plus any interest earned, ~~within 30 days~~  
10 ~~following the conclusion of all administrative and judicial review~~  
11 ~~to the persons and entities who are found to be entitled to those~~  
12 ~~funds; to the persons and entities that are found to be entitled to~~  
13 ~~those funds, within 30 days following either of the specified events~~  
14 ~~occurring:~~

15 (1) *The conclusion of all administrative and judicial review.*

16 (2) *Written notice is received by the Department of Industrial*  
17 *Relations from the Labor Commissioner, his or her designee, or*  
18 *a representative of an authorized labor compliance program of*  
19 *an awarding body of a settlement or other final disposition of the*  
20 *assessment or notice.*

21 (c) The Labor Commissioner shall, upon receipt of a request  
22 from the affected contractor or subcontractor within 30 days  
23 following the service of a civil wage and penalty assessment under  
24 Section 1741, afford the contractor or subcontractor the opportunity  
25 to meet with the Labor Commissioner or his or her designee to  
26 attempt to settle a dispute regarding the assessment without the  
27 need for formal proceedings. The awarding body shall, upon receipt  
28 of a request from the affected contractor or subcontractor within  
29 30 days following the service of a notice of withholding under  
30 subdivision (a) of Section 1771.6, afford the contractor or  
31 subcontractor the opportunity to meet with the designee of the  
32 awarding body to attempt to settle a dispute regarding the notice  
33 without the need for formal proceedings. The settlement meeting  
34 may be held in person or by telephone and shall take place before  
35 the expiration of the 60-day period for seeking administrative  
36 review. No evidence of anything said or any admission made for  
37 the purpose of, in the course of, or pursuant to, the settlement  
38 meeting is admissible or subject to discovery in any administrative  
39 or civil proceeding. No writing prepared for the purpose of, in the  
40 course of, or pursuant to, the settlement meeting, other than a final

- 1 settlement agreement, is admissible or subject to discovery in any
- 2 administrative or civil proceeding. The assessment or notice shall
- 3 advise the contractor or subcontractor of the opportunity to request
- 4 a settlement meeting.

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